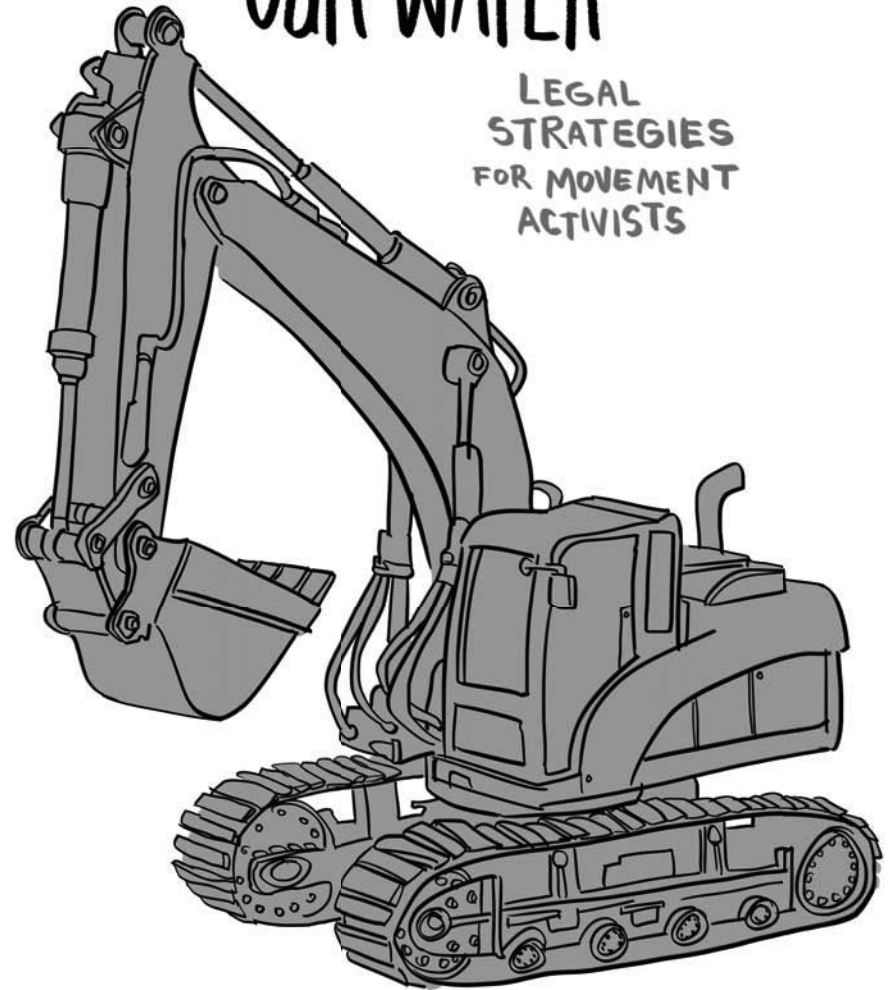


PROTECTING OUR WATER

LEGAL
STRATEGIES
FOR MOVEMENT
ACTIVISTS



BOOK 1: PRE-ACTION

* PIPELINE LEGAL ACTION NETWORK *

RESOURCES

CIVIL LIBERTY DEFENSE CENTER—WWW.CLDC.ORG

ELECTRONIC FRONTIER FOUNDATION—WWW.EFF.ORG

INDIGENOUS PEOPLES POWER PROJECT—WWW.IP3ACTION.ORG

MIDNIGHT SPECIAL—WWW.MIDNIGHTSPECIAL.ORG

MUTANT LEGAL COLLECTIVE—WWW.MUTANTLEGAL.ORG

NATIONAL LAWYERS GUILD AND NATIONAL BAIL FUND NETWORK—“BEST PRACTICES GUIDE TO SETTING UP A LEGAL DEFENSE FUND”—WWW.NLG.ORG

THE RUCKUS SOCIETY—WWW.RUCKUS.ORG

TITLED SCALES COLLECTIVE—THE CRIMINAL LEGAL SYSTEM FOR RADICALS—WWW.TILTED_SCALES_COLLECTIVE.ORG

TRAINING FOR CHANGE—WWW.TRAININGFORCHANGE.ORG

BEAUTIFUL TROUBLE: A TOOLBOX FOR REVOLUTION—WWW.BEAUTIFULTROUBLE.ORG

ORGANIZING FOR POWER, ORGANIZING FOR CHANGE—WWW.ORGANIZINGFORPOWER.ORG

PROTECTING
OUR WATER

- Start a call-in or write-in campaign. Call the mayor, the police chief, and other government pawns, or write a letter to the editor denouncing police harassment, misconduct, unlawful arrests, and/or the attempt to oppress and silence people.

Once people start getting out of jail:

- Copy (and keep track of) everyone's paperwork from the cops (arrest reports, etc.), jail (booking info, property reports), and court (hearing dates, info on charges, etc.).
- Remind people about their upcoming court dates by calling, mailing, and emailing them.
- Organize a rally outside of the jail and for first appearances, if relevant.
- Small affinity group actions are catalysts for major social change. From ACT-UP in the '80s making AIDS care and awareness a national priority to Food Not Bombs visibly serving free food to hungry people, small actions make a big difference.
- The more effective we are, the more we risk arrest and other types of repression. The legal system is designed to break us down and dehumanize us. Having a legal support person is just one more step toward resisting the criminal "justice" system, the corrupt government it props up, and the corporate rulers who use this system to oppress and silence us all.

Before the action:

- Arrange ahead of time, and let ALL of your affinity group members know a local number that accepts collect calls from jail where you can be reached, or that you will be checking regularly and frequently.
- Have everyone planning on going to the protests—even the ones who don't plan on getting arrested!—fill out a Jail Support Form. That way you know their critical information in case they get arrested.
- Have access to people's bail money (or sources of bail money—friends, parents, etc.)

During the action:

- DON'T GET ARRESTED.
- Remind people calling that phones are recorded and monitored (the jail's and/or yours).
- Don't post video or photos on social media that could be used later to implicate anyone. Be very cautious and intentional about the use of social media during an action. It is best to discuss with your affinity group what kind of documentation you want to use and unintended consequences of that getting into the wrong hands.
- Get (and keep track of) arrested people's booking and arrest numbers and upcoming court dates.
- If and when you hear from your friends in jail, contact the rest of your affinity group and others arrested. Folks want to be informed of the situation. Update those people regularly, even if nothing's changed.
- Emergency contact people should be able to at least leave messages with the legal support person and be called back.
- Be able to arrange travel home for your arrested friends. This can mean arranging something with a friend with a car, collecting bus money, etc.
- Be available until everyone in your affinity group is out of jail.
- Be able to get messages from the outside world to your arrested friends. This is a HUGE morale booster.

PROTECTING OUR WATER

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BOOK 1: PRE-ACTION

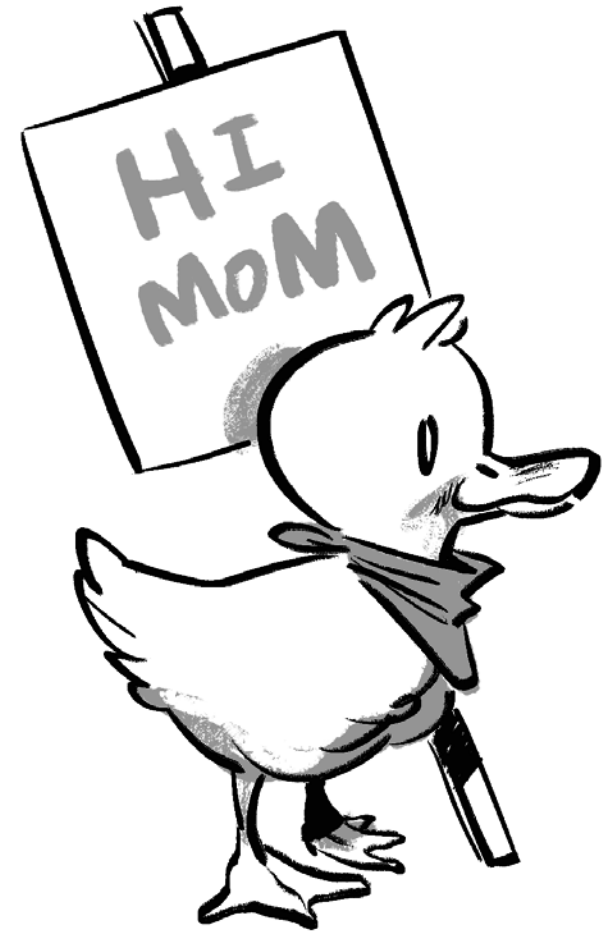
★ PIPELINE LEGAL ACTION NETWORK ★

Second printing 2020

Written by Pipeline Legal Action Network, Minneapolis, MN.

Bde Ota Otunwe, Mni Sota Makoce, aka “Minneapolis, Minnesota,”
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AFFINITY GROUP—LEGAL SUPPORT PERSON

As the fight against corporate domination becomes more effective, the system becomes more aggressive in clamping down on resistance. A legal support person helps coordinate support for those arrested in their affinity groups or communities. Although this handout is written with affinity groups in mind, it can also be applied to individuals who want to support their friends if they are arrested.

There are a lot of roles the legal support person can fill. Below are some examples. Don't feel like you're disqualified if you can't do them all. Just let your affinity group know your limits so they can plan ahead—and maybe someone else can help be the legal support person with you.

INSTRUCTIONS FOR THE JAIL SUPPORT FORM (PRINT ON THE BACK SIDE)

If you plan to risk arrest at all, complete this form and give it to your legal support person. **DO NOT BRING IT TO THE PROTESTS.** We don't want this information to be confiscated by police. The form is voluntary, and you may leave any of the questions blank. The purpose of the form is to have information available that may help if you're arrested. Don't write anything that could be used as evidence against you.

The first four questions on this form are also booking questions. Answering them in jail will probably speed up your release. For any other questions cops ask you, say, "I'm going to remain silent. I want to see a lawyer."

1. **Legal name** – Lawyers usually need your exact legal name or some other identifying information to visit you in jail. We ask for other names you go by, either your preferred name or your action name so that, if someone reports your arrest without knowing your legal name, we can locate your paperwork.
2. **Address** – A judge may release you with no bail if you give a verifiable local address. See #10.
3. **D.O.B.** – If you're under 18, please talk to the legal support team directly about your situation.
4. **Sex listed on driver's license** – Your gender will usually be assigned by what the arresting agency believes it to be. Generally, you will be kept in custody with people of that assigned gender. It is useful for your legal support person to know where you may be housed. Some jails have policies regarding housing for transgender people, but most do not. If you believe that you will face discrimination because of your gender, please put this on the form.
5. **Email** – This will help you organize legal support with the rest of your affinity group.
6. **Phone** – This will help you organize legal support with the rest of your affinity group.
7. **Medical concerns** – Most activists are cited and released within a few hours of arrest, but you may be in jail for days. Please indicate any other medical conditions you want your legal support person to know.
8. **Other concerns** – If there are any other reasons your time in custody may be more complicated or make it likely that you will not be treated like other arrestees, please let your legal support team know. Citizenship/Immigration Status - You should never reveal this information to law enforcement, on the street, or in jail. It is part of your right to remain silent, and you do not have to answer any questions regarding your immigration status. However, it can be useful to let your legal support person know your status. If you are not comfortable writing this down, find a trusted non-arrestable person to talk to about it.
9. **Date you need to be released** – We will do our best!
10. **Other people to contact** – Let your legal support person know if there is anyone who should be contacted if you are in custody for an extended period: your employer, childcare provider, pet sitter, etc. You may indicate when to do so if you want to (e.g., if I'm in for three days call my boss).

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APPENDIX

JAIL SUPPORT FORM—Print This Out Back to Back

This form is for everyone planning on going to the protests. Please fill it out ahead of time and give it to your legal support person. **Do not bring this to the protest.** This form is voluntary, and you may leave any questions blank. See back of the page for full instructions.

1. Legal name:
Other name(s) used:
2. Address:
3. Date of birth:
4. Sex listed on driver's license:
Preferred pronoun/gender identity:
5. Email:
6. Cell phone:
Other phones (home, office):
7. Medical concerns & details (illnesses, medications, dietary needs):
8. Other concerns (immigration status, outstanding warrants, etc.):
9. Date by which I absolutely need to be released if possible:
10. Whom do you want me to call if you get arrested or there's an emergency?
Name:
Phone:
Connection to you:
What should I tell them?

Name:
Phone:
Connection to you:
What should I tell them?

INTRODUCTION

This workbook has been put together by Pipeline Legal Action Network (PLAN). We are legal workers and legal support organizers who want to help build a movement committed to anti-colonial and anti-extractive practices and policies. Our aim in creating this book is to help you to strategize effectively and mitigate the risks inherent in direct action and confrontational activism that is necessary in furthering this movement. Our work stems from Line 3 struggles on occupied Anishinaabe and Dakota land in Minnesota and can be applied to many different contexts. Our work is rooted in the following principles:

We are committed to restoring a paradigm that recognizes humanity's dependence on our shared and living Earth. We join in resisting extractive industries and colonization. We respect the inherent autonomy and sovereignty of indigenous peoples. We recognize that this is stolen land and that Line 3 is but one example of ongoing colonization.

We embrace the concept of abundance and are committed to centering relationships as part of this vision. We promote non-competition within this ecosystem of resistance. We humbly seek to share space in this struggle and welcome other groups engaged in anti-colonial, anti-extractive efforts. We seek to practice the values and visions we desire for the future, today.

Our work will expand the realm of possibility for transformative action by pushing back against repression and reducing the harm caused through the legal system. The legal system is a colonial imposition and an essential tool for those wishing to consolidate power, wealth, and control. We will equip water protectors with knowledge and resources to strengthen movement against extractive industry and reduce harm associated with criminal charges.

We will prioritize organizational structures that support individual autonomy while acting in ways that honor our interdependence. We will support groups and individuals in making their own informed decisions by decentralizing information, power, and resources.

Our work will be rooted in a respect for a diversity of tactics in our shared struggle to stop Line 3 and end the fossil fuel era. We recognize that the state takes advantage of tactical differences to divide

movements. Movements that include diverse tactics are resilient in the same way diverse ecosystems are resilient.

We see oppression as intertwined and systemic. We commit to work to end all relationships of domination and subjugation, including but not limited to those rooted in hetero-patriarchy, racism, classism, colonialism, anti-semitism, and transphobia.

We reject the narrative of “workers versus environmentalists.” Climate catastrophe disproportionately impacts poor and working people. If the system requires us to sell our future to survive today, then the system must be changed.

Our work is movement work and our solidarity is with those who stand with their comrades and movement. We will not provide support to those who undermine movement through state collaboration.

directly. As opposition continued to grow, the sentences got lighter and lighter. Public opinion is a powerful tool that influences the political processes.¹¹

THINK IT THROUGH

1. Do you have a good intuitive analysis of the social conditions in the movement?
2. How can you plan for the least negative repercussions, even if your actions are spontaneous and passionate, rather than cold and calculated actions?
3. How can you move forward from both your successes and failures in a way that continues to build the movement?

¹¹ Tilsen, Ken. *Judging the Judges: Justice, Punishment, Resistance, and the Minnesota Court During the War in Vietnam*. North Star Press: St. Cloud, 2002, pp. xii, xiii, xvi.

Treaty Law and Tribal Sovereignty: While treaties are meant to be the “supreme law of the land,” in practice judges and prosecutors have often been able to dodge or ignore arguments based on treaty law and tribal sovereignty. Outside political pressure can help push courts to pay more attention to treaty law. Under the right circumstances, you could be a part of codifying and expanding treaty protections under the law. Different regions are covered by different treaties, and different jurisdictions have different ways of handling treaty arguments. To be successful in legal arguments, you will likely need to be enrolled in a federally recognized tribe. It is important to research treaties covering the region you are in.

There are political gains to be made from asserting tribal sovereignty even if there is not a huge chance of a legal victory. Understanding these issues in advance of your action can help you decide if this path is right for you or your crew and how you might shape your tactics to fit this legal strategy.

A NOTE ON STRATEGY

There are many reasons people find themselves taking direct action. It could be part of a step in a campaign, an action compelled to maintain integrity and self-respect, or an expression of rage over an injustice. All of these can be part of a strategy towards shucking oppression and creating space for self-determination. Sometimes “strategic thinking” is looked at as being opposed to visceral expressions of a need for change. In reality, they are intertwined as much as our thoughts and feelings work together to shape our decisions.

BUILDING POPULAR POWER TO INFLUENCE CHANGE

A book published in 2002, *Judging the Judges* by Ken Tilsen, examined the ways that federal judges’ sentencing of Vietnam War era draft resisters changed as public opinion toward the Vietnam War changed. The controversy over the war and the public opposition to the war in Vietnam brought down President Lyndon Johnson and contributed to President Richard Nixon’s forced departure. The judicial system neared collapse from the number of draft resistance cases before the court: By July 30, 1972, there were 390 criminal cases in Minnesota alone. Initially, the most severe sentences were given to defendants who took active steps to oppose the war or the selective service

This workbook has been written with these principles in mind. Everyone’s situation is unique, and we aim to help you make the best choices for you and your community in the specific situation in which you find yourselves. This workbook includes information and exercises to help you think your way through possible situations in advance when you are preparing for direct action. The workbook has three major sections. Book 1 is “Pre-action Issues,” Book 2 is “Action Concurrent Issues,” and Book 3 is “Post Action Issues.”

As of Fall 2019, we are publishing the first book as an independent section: Book 1: “Pre-Action Legal Issues,” because right now activists are building a movement to stop the spread of tar sands oil pipelines across indigenous land. We hope you will do the activities with your group and give us feedback (PLANLine3@gmail.com) as we continue to work on the other sections of this workbook.

WE ARE GRATEFUL TO THE FOLLOWING PEOPLE AND ORGANIZATIONS FOR HELPING TO BRING THIS WORKBOOK TO YOU THROUGH DIRECT EFFORT, BUT ALSO THROUGH TEACHING AND COLLABORATION OVER THE YEARS:

AMERICAN CIVIL LIBERTIES UNION

ANARCHIST BLACK CROSS

CENTER FOR CONSTITUTIONAL RIGHTS

CIVIL LIBERTIES DEFENSE CENTER

ELECTRONIC FRONTIER FOUNDATION

FRESHET COLLECTIVE

LAW FOR BLACK LIVES

MIDNIGHT SPECIAL LEGAL COLLECTIVE

MUTANT LEGAL COLLECTIVE

NATIONAL LAWYERS GUILD

TILTED SCALES COLLECTIVE

WATER PROTECTORS LEGAL COLLECTIVE



Necessity Defense: The necessity defense is appealing to many activists because it often sounds like how they feel. Why would we be putting our freedom at risk if we didn't HAVE TO? Necessity defenses are especially common in the Catholic Worker movement where bold actions are taken and "speaking truth to power" in the courtroom is highly valued. The reality is that the necessity defense rarely wins at trial, but it can help defendants win other political gains.

The necessity defense often includes demonstrating that there was no legal means to achieve your goals, that you acted to avoid risk of harm, and that the harm avoided was greater than that caused by breaking the law. Often, there is also a requirement that the harm be imminent or likely to occur in short order, and that the action is reasonably expected to avoid the imminent danger. Understand that these questions aren't answered by you, but by the judge or jury at trial. The judge can also deny the use of a necessity defense. The point is, it is unlikely you will find yourself in a position to use necessity and win, but your chances are improved if you understand the specifics of the laws and arguments beforehand.

THINK IT THROUGH

1. Will you expect some people to pay their own bail? How will you manage this? Will you ask people to reimburse the bail fund?
2. Do you want to bail folks out right away or wait until after arraignment?
3. What sort of bail amount do you imagine needing?
4. Are you just bailing out your affinity group members? Are you responsible for other people who may be joining your action?
5. Do you know the local rules about posting bail versus bond?
6. What happens to the bail fund afterwards? How does the bail get returned to the fund? Who will decide what happens to the money raised for bail once the campaign is over?

PLANNING YOUR POST-ACTION LEGAL NEEDS

Even though you can't be certain how things will turn out after an action, you may want to consider possible outcomes in advance that will **help you be best prepared** for how you find yourself after your action. **Repression** is the process by which reactionary forces work to limit or undo the gains you've made. Often state repression comes in the form of a **criminal case**.

THINK IT THROUGH

1. What kind of repression might you anticipate?
2. How will you respond and move strategically to make sure that you gain more than you lose?

LEGAL STRATEGY

Here we want to mention a few legal strategies that are lesser used and require more specific circumstances. If these interest you, speak to a lawyer who practices in the jurisdiction in which you will be taking action, and have the lawyer describe the specific precedent, needs, and pitfalls of these strategies.

LEGAL SELF DEFENSE: KNOW YOUR RIGHTS

*"I'm going to remain silent.
I want to see a lawyer."*

If you know the enemy and know yourself, you need not fear the result of a hundred battles. If you know yourself but not the enemy, for every victory gained you will also suffer a defeat. If you know neither the enemy nor yourself, you will succumb in every battle.

—Sun Tzu, *The Art of War*

Knowing your rights is about understanding how to be safer and more effective when pulled into repressive government systems. We recommend that you do not rely on your "rights," or expect that they will be respected; however, understanding the government's "rights" framework can help you limit the ways you make yourself and others vulnerable and give you more tools with which to fight back.

In this section we will cover:

- **Cops on the Street:** What their "rules" are, as well as ways to protect yourself from common police tactics.
- **Search and Seizure:** What is "allowed" and ideas of how to respond to search requests.
- **Interrogations:** Law enforcement is trained to manipulate. Keep yourself, your friends, and your movement safe.
- **Special Legal and Jurisdictional Considerations:** Certain tactics, industries, or locations may have other laws worth your consideration.

QUESTIONED BY COPS ON THE STREET

For the purpose of this section, we use the word “cops” to refer to all law enforcement personnel. This could be local police or sheriffs, as well as the FBI, ATF, BIA, ICE, or any of many federal law enforcement agencies.

Cops can lie and are trained to manipulate. They can also be bored, aggressive, racist, and/or entitled. Cops can engage in illegal activity, such as doing drugs, while under cover. They do not have to admit to being cops if you ask.

You never have to talk to cops. In fact, a good rule is to **never talk to cops**. There are times when talking to cops may help a situation go more smoothly or avoid drawing attention or suspicion. People and communities that are targeted by cops may need other tools for regular street interactions. However, more often than not, the best thing to do is not to talk to cops. If you are questioned, it is best to invoke your right to remain silent by stating “I am going to remain silent.”



BAIL AND BAIL FUNDS

Often the legal team is responsible for administering some sort of bail fund, though it is also common for affinity groups to deal with their own bail and jail support needs. Individuals with access to resources may be able to post their own bail. The National Lawyers Guild and National Bail Fund Network recently put together a “Best Practices Guide to Setting Up a Legal Defense Fund.” The details of setting up a bail fund are beyond the scope of this workbook, but we offer here some starting thoughts and resources for continued investigation.

How do you make decisions about bail that doesn’t leave anyone behind?

activist which lawyers might be interested and who can help the legal team network.

There are several purposes for lawyers in legal support. They can advise you before your action, or visit the jail after arrest, or represent people during their trials, or do ongoing appeals and/or post-conviction relief work. Lawyers can also help you sue the cops or corporations in civil lawsuits. You don't need the same lawyer for all of these roles. The more you plan and line up lawyers in advance, however, the better positioned you will be.

THINK IT THROUGH

1. Do you want to organize a group meeting with all of the lawyers who are interested and all of the legal team?
2. Will you need to plan in advance to get a meeting with lawyers? How early can you let them know what you need?
3. How can you make sure that everyone's commitments are clear, so that you know what to expect and don't overburden anyone?
4. How do you keep lawyers informed and have realistic expectations of their time?

VOLUNTEERS

Volunteers are critical for the success of your legal team.

THINK IT THROUGH

1. How can you make sure that legal team members and volunteers don't always get stuck doing the same mundane tasks? How can the on-site legal and the off-site legal work together? How can you plan for tension between these different tasks and groups of people?
2. How can you be sure that everyone on the legal team has good information? Effective communication and information sharing are very important.
3. Most lawyers are used to working hierarchically. In the past, there have been issues with control and power dynamics between activists and lawyers. How can you make plans to share information and decisions?

THINK IT THROUGH

Below is a list of situations in which the cops might be involved. Draw a line through all the situations in which you would not talk to the cops, and circle the times in which you would. If you are unsure, talk it through with your comrades.

- Passing through airport security
- Walking away from a demonstration
- Seeing a suspicious package on the subway
- When they knock on your front door
- In the back of the squad car
- Going through a border checkpoint
- At a diner over coffee
- When they ask if you were involved in something potentially illegal and you weren't
- When they ask if you were involved in something potentially illegal and you were, but you have a good reason
- If you are the police liaison for an action

Brainstorm a list of some other times you definitely wouldn't, definitely would, or are unsure if you would interact with cops. What would help you decide not to interact with cops? It is easy to unwittingly provide information when taken by surprise or when you are scared. What would help you be prepared not to talk with cops when feeling pressured, scared, disoriented, etc.? Discuss your choices with your comrades.

There are 3 levels of interaction with the cops where you might be questioned: **casual conversation**, **detention**, and **arrest**. You have different rights at each level and different tools to mitigate harm.

CASUAL CONVERSATION

The cops, like almost anyone else, can approach you and ask you questions. If a cop approaches you for a conversation, ask if you are free to leave. If the cop says you are free to leave, leave in the safest way possible.

Practice Dialogue

Practice this with a friend then switch roles and repeat.

Cop: Hey, were you just at that protest march?

You: Am I free to go?

Cop: I just have a few questions.

You: I choose not to talk to you. (Walk away.)

DETENTION

A cop can detain you if they have a “reasonable suspicion” that you are involved in a crime. Reasonable suspicion is a deliberately broad and vague category, easily manipulated. If you are not free to go, ask why you are being detained. You may have to provide your name, address, and date of birth, but you are not required to say anything else. It is a crime to give a false name. Police are supposed to give you their name, agency, and badge number if you ask, although they often don’t. You may be patted down, and any possessions within your reach may be searched if police “reasonably suspect” you “pose an imminent threat of serious physical injury.” Write down everything you can remember about the interaction, and **DO NOT CONSENT TO ANY SEARCHES!**

Practice Dialogue

Cop: Hi, can I ask you a couple of questions?

You: Are you detaining me?

Cop: I’m detaining you. Hands against the wall, feet back, and spread ‘em.

You: Why am I being detained?
(Memorize and report the response.)

LEGAL TEAM

Legal teams are comprised of folks who primarily support the attorneys and the legal infrastructure. There are usually legal workers who are part of the affinity group, short-term legal volunteers who want to plug in and help where they can as well as dedicated legal workers. Each legal team is unique to the specific movement. Attorneys may or may not be on the legal team.

SETTING UP A LEGAL TEAM¹⁰

These are some initial things to think about when setting up a legal team.

THINK IT THROUGH

Questions to consider:

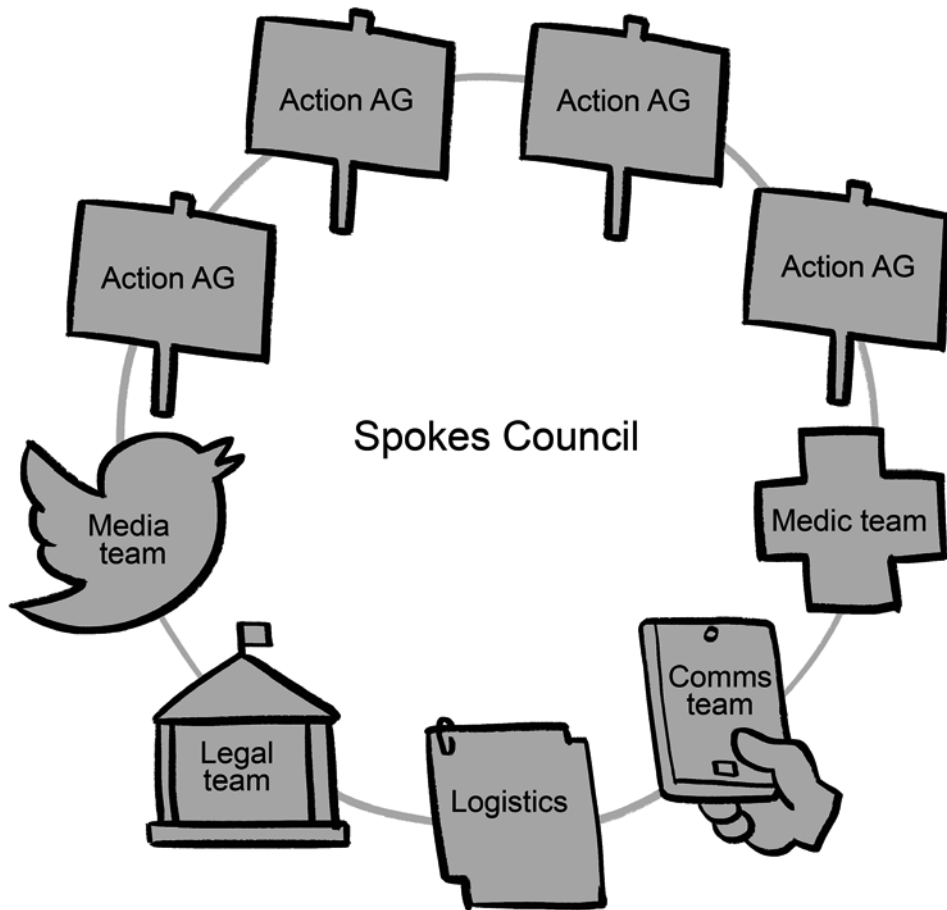
1. How will the legal team make decisions?
2. How will the legal team be accountable to the larger group?
3. What are the goals of the legal team? What assumptions are implicit that need to be made explicit?
4. For whom are you committed to provide legal support for (e.g., anyone arrested in conjunction with the action, only those participating in legal solidarity, only those whose tactics or charges fall inside “action guidelines,” etc.)?
5. What are likely police tactics? What are possible strategies to deal with these tactics?
6. Are there proactive legal or political steps you can take to thwart police or government harassment and repression?

LAWYERS

It is helpful to establish good relationships with the local legal community. Connect with progressive legal organizations, like the National Lawyers Guild (NLG) and the ACLU, as well as local public defenders. If you don’t already have ties in the local legal community, ask a local

¹⁰Adapted by midnightspecial.net.

Diagram 4
Spokes Council



Why the spokes council model? The spokes council model allows for decisions to be made directly by the people most affected. In the case of legal work, the most affected people are those who are likely to be arrested and the movements they are fighting for. In a traditional law firm or non-profit, a board of directors sets the agenda, the director/manager makes the decisions, and the most affected are at the bottom receiving a service. In a spokes council, the whole movement sets the agenda, and the decisions are made by those shouldering the consequences.

Cop: You fit the description of someone we're looking for. What's your name and date of birth?

You: I'm Jesse Sparkle. September 8th, 1998.

Cop: What are you doing out around here?

You: Respectfully, I'm not going to answer any further questions. If you give me your name and badge number, I will have my lawyer get in touch with you.

ARREST

Cops can arrest you if they witness you breaking the law, have probable cause to believe you have committed a crime, or have an arrest warrant signed by a judge. If you are arrested, immediately ask for a lawyer. Do not respond to any police inquiries. Say, **"I am going to remain silent, and I want to contact an attorney."** This invokes your right against self-incrimination, which helps protect you during police interrogation.

Practice Dialogue

Practice this with a friend then switch roles and repeat.

Cop: Hey, you, stop.

You: Are you detaining me?

Cop: I'm placing you under arrest.

You: I'm going to remain silent. I want to contact an attorney.

Cop: That's fine. You'll be able to contact your lawyer at the station.

SEARCH AND SEIZURE

The Fourth Amendment is supposed to protect your privacy from government intrusion. Cops are not allowed to search you, your possessions, your home, etc. unless:

- **You consent,**
- The cops obtain a **search warrant**, or
- **An exception** to the search warrant requirement exists, such as:

Weapons search **within “wingspan”**;

Exigent circumstances or emergencies—sometimes called **“hot pursuit”**;

Contraband or evidence of a crime is in **“plain view”**;

At “ports of entry,” including international airports.

If you are arrested, they can search your personal belongings.

It is important to NEVER CONSENT TO A SEARCH. It must be said out loud. Under the law, your silence may indicate consent or agreement. Say, **“I do not consent to a/this/any search! And I am invoking my right to stay silent.”** Be respectful but say it firmly and often. If the cops violate your Fourth Amendment rights, don’t physically interfere but do write up everything you remember in order to document what happened, and speak to a lawyer.

Also, be aware that a roommate or guest can consent to a search of your house, and your employer can consent to a search of your workspace. Have conversations with people in your spaces about how to respond to cops attempting a search.

Practice Dialogue

Practice this with a friend then switch roles and repeat.

Cop: (pulls you over) Give me your license.

You: Sure thing (hand it over). Why did you stop me?

Cop: Your taillight is out. Can you pop the trunk for me?

You: Respectfully, I don’t consent to have my car searched. If you want to give me your card, I can give it to my lawyer, and you can talk to them about it.

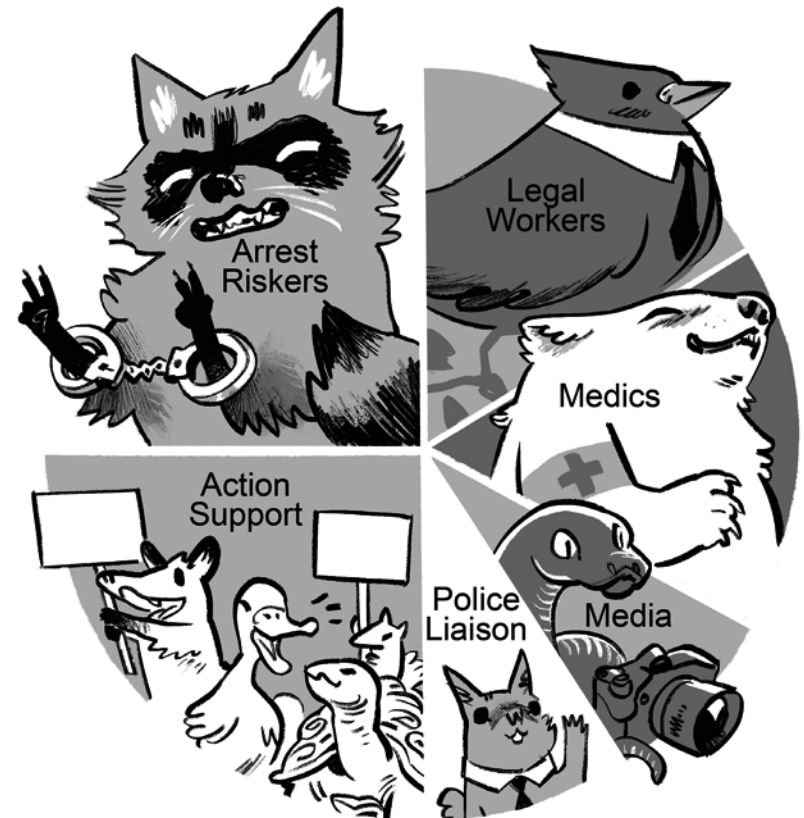
Cop: Here’s your ticket. Get it fixed.

also be a LO without organizational affiliation, but you may lack credibility in court proceedings. If you know someone that you trust outside your affinity group who is LO trained, consider asking for help. It can build relationships, solidarity, and movement power to find ways to include others in your action. Then, next time, show that you value their work by legal observing for them.

If the action is larger than just your affinity group, it can help to have a legal team for the action. The legal team might be made up of representatives of many affinity groups, and it functions both as an independent group—planning for their role in the action and making decisions on the fly based on their best judgment—and also as representatives who ensure that the needs of their affinity group members are considered. Although the legal group can have some autonomy, make sure you include discussions about legal strategy in the larger spokes council conversation. It is important that the legal team is ultimately accountable to the action affinity groups.

Diagram 3

Action Affinity Group



LEGAL AND JAIL SUPPORT SET-UP

The primary focus of this workbook is legal work; therefore, we aren't going to get into different direct-action affinity group roles. Instead we are going to focus on setting up your legal team and getting things lined up for effective jail support.

Your action's legal needs depend on the size of the planned action and how many groups are involved. If you are doing a lockdown at an office building with a team of 12 people, your legal needs might be met by 1 to 3 people. If you are helping coordinate a larger day of action to shut down a city, your legal team might number in the dozens. The nice thing about the **Affinity Group/Cluster/Spokes Council model** is that it is scale-able. A traditional legal office or non-profit only has the capacity of its staff. If the action gets bigger suddenly, it is playing catch-up to hire and train more staff (and fundraise to pay them). In contrast, a **spokes council** naturally grows to reflect the size of an action, which generates more capacity and strength to share.

With a small action it's nice to have one person off site who can receive calls from jail. **Some jails don't allow calls to cell phones.** Some will, but only **if there is already a prepaid account set up.** You can research this in advance of your action.

It's helpful to have everyone fill out a **jail support form** (see appendix), discuss bail options, special needs and considerations, and the type of jail solidarity tactics your group wants to employ. This is an opportunity for you to assess, within your group, the distinct needs of your arrestable comrades and come to an agreement around bail and time spent in jail given those needs. The jail support form should include names and contacts of people who can help you fulfil your responsibilities; it's nice to know that your cats will get fed while you are in jail, for instance. Also be sure to include things like medications and make a plan with your crew (and your outside person) in the event your meds are withheld. Plan to have the jail support forms kept in a secure location away from the action and not destroyed post-action.

Your small action may or may not want a **legal observer (LO)**. LOs can help **document** what happens with an eye towards what might be helpful in a **criminal defense case or a civil suit** if there is misconduct on the part of the cops. LOs can help action participants feel safer and even mitigate abusive behavior on the part of cops. LOs can also help **track and communicate** arrests to the person off site. It isn't unheard of for LOs to get arrested, and you shouldn't assume the cops won't misbehave just because a legal observers is present.

The National Lawyers Guild and the American Civil Liberties Union have legal observer programs that include training and certification. These organizations accept activists as trainees, though you can't be an LO for an action in which you are participating. You can

Sometimes people will consent to a search, believing they have nothing to hide and thinking that seeming agreeable will help them get out of a ticket. This may sometimes be true, but it is a hard judgment call. You don't know what the cops are looking for, and you may not even know everything that is in your car. It is wise to err on the side of not giving cops more information and access than they already have. It's also good solidarity with comrades and other people who won't consent to be searched. Some people use the term "soft snitching" to indicate the act of demonstrating your innocence in a way that casts suspicion on others.

INTERROGATIONS

If you are approached by cops or arrested, you **DO NOT have to answer any questions.** You should affirmatively and unambiguously state that you wish to assert your right to remain silent. Ask for a lawyer right away. Do not say anything else. Repeat that to every officer who tries to talk to or question you. If you find yourself talking to cops, stop. Assert your right to remain silent and that you wish to speak to a lawyer. Say, **"I'm going to remain silent. I want to see a lawyer."**

Cops are trained to lie or trick you in order to get information about you or one of your comrades or family members or a confession that you would otherwise be reluctant to give. Once you invoke your rights, they may turn up the heat or air conditioning to make you uncomfortable or take other action to get you to break your silence. If you say anything, or even ask to use the bathroom, you must then re-invoke your rights. It may not be enough to simply say you are not going to talk. The phrase, "I'm going to remain silent. I want to see a lawyer," may be clumsier than, "I ain't saying shit," but it is clearer under the law and keeps you safer from having your rights subverted.

THINK IT THROUGH

Saying which of the following will help protect your rights when interacting with cops? Circle the helpful phrases. Discuss your decisions with your comrades.

- I don't consent to this search.
- Come on in.
- It wasn't me; it was that guy I was with.
- It wasn't that guy; it was all me.

- I'm going to remain silent.
- I want to see a lawyer.
- I ain't sayin' shit.
- If you give me your card, I'll have my lawyer get back to you.
- Am I free to go?
- If you put your hands on me, I will fuck you up!
- Don't taze me, bro!

SPECIAL LEGAL AND JURISDICTIONAL CONSIDERATIONS

Along with knowing your rights, it is important to know what actions will fall outside of the state's rights framework. **How the state will respond to your actions are not entirely within your control.** However, studying up on similar charges under similar conditions in your area can help you better assess the risks you face. Playing out every possibility is beyond the scope of this project. We will, however, lay out some flags to watch out for and call attention to some current trends in charging at the time of this writing. It's also important to remember that you may be subject to charges based on Federal law, State statute, Tribal law, County law, or City/Municipal ordinance as well as other possible jurisdictions.¹

RAILROADS, PORTS, AND UTILITIES

If your action or campaign may involve railroads, ports, or utilities—either because your target is a utility company like an oil pipeline, or because your strategy involves limiting the movement or resources along railways or waterways—you should read *Railroads, Ports, and Utilities Legal Primer* by the Civil Liberties Defense Center. Then, **find a lawyer who can give you more precise answers** to hypothetical situations you, your comrades, or your campaigns might find yourselves in.

Understand that railroads and ports may have their own police with special jurisdictions. There are also additional laws or enhanced penalties for interference with energy facilities, national defense, or interstate commerce.

¹ Civil Liberties Defense Center, www.cldc.org.

Do you want to have a lawyer or two who are willing to do jail visits? If you have what you need lined up before folks get arrested, you won't be scrambling and can put more capacity into other work.

THINK IT THROUGH

Below is a list of some possible action roles. Imagine a specific action that you might be excited about (a lockdown at a pipe-yard, a noisy demo at a corporate office, an occupation of a city council meeting, etc.) or, better yet, use something that came out of a previous exercise. Circle the roles that make sense for your action. If you have some roles that aren't listed, put them down and circle those too:

Police Liaisons

De-escalation Team

Communications Team

Legal Support

Legal Observers

Media Team

Medics

People Risking Arrest
(committing civil disobedience)

Direct Support
(risking arrest to stay with those committing civil disobedience, e.g., bringing water to folks locked down)

Rally Attendees
(can help draw attention, protect higher-risk participants)

Talk with your crew about why you circled what you did? What is important about that role to you? How are you going to fill these roles? If you are short on capacity, will you let something go or work to find more support for your actions?



PORTS OF ENTRY AND BORDER REGIONS ²

At ports of entry and airports, customs officials can stop you to determine if you are eligible to enter the United States. They can also search belongings for contraband. Presenting false or expired papers may lead to deportation or criminal charges. If you are a citizen, you need only answer questions to prove such. If you are a green card holder or an otherwise permitted non-citizen, it may be a crime not to produce your immigration papers when asked. Always keep a copy of your immigration papers with someone you trust, who can fax them to you if needed. **Check with an immigration lawyer about your specific case.**

Within 100 miles of the border, Customs and Border Patrol (CBP) claim the right to operate immigration checkpoints. Excluding checkpoints, they cannot pull anyone over without “reasonable suspicion,” and they cannot search your vehicle without probable cause that an immigration violation or a crime has occurred. Within 25 miles of the border, CBP can enter private land without a warrant; however, they may not enter dwellings or homes without a warrant or consent. They may not cause physical damage to private property.

Talk to your comrades about how you intend to handle possible run-ins with CBP. Consider both your security and safety needs and also how to **be in solidarity with folks with less privileged status.**

ANIMAL ENTERPRISE TERRORISM ACT

The American Legislative Exchange Council (ALEC) is a corporate conglomerate that lobbies for the passing of model legislation favorable to its member industries. One major law passed by ALEC is the **Animal Enterprise Terrorism Act (AETA)** and its precursor is the Animal Enterprise Protection Act. The AETA criminalizes any action taken “for the purpose of damaging or interfering with the operations of an animal enterprise.” That means what might otherwise be minor property damage or even a picket can be charged as a federal crime. There may be similar laws around other industries in your local jurisdictions, so ask around.

² American Civil Liberties Union, ACLU.org, and National Lawyers Guild, NLG.org.

MATERIAL SUPPORT TO FOREIGN TERRORIST ORGANIZATIONS

The Supreme Court case, *Holder vs. the Humanitarian Law Project*, upheld that any support for a group on the President's Foreign Terrorist Organization (FTO) list is against the law, even if said support is merely supplementary, for example providing a conflict-resolution training.³ **International solidarity is a crucial part of building strong resistance movements.** Be bold but be smart. At the time of this writing, no one to our knowledge has been tried or convicted just for speaking positively of an FTO, but there have been several investigations into international solidarity campaigns, as well as surveillance on diasporic communities connected to countries where FTOs are more powerful.

If your organization plans to work with groups in other countries, give yourself a pat on the back—there's not enough international solidarity these days. Then, talk to a lawyer and research who is on the FTO list, as well as look for connections with groups you hope to support, and then plan accordingly.

RICO

The Racketeer Influenced and Corrupt Organizations Act (RICO) was passed to fight the mafia. It is now used against protesters and change-seeking organizations, **often targeting what is otherwise constitutionally protected activity.** Both People for the Ethical Treatment of Animals and the Humane Society have been targets of RICO. Could the tactics you are considering be considered extortion? Do some research, ask a lawyer, but—most importantly—look at what other folks in your region have faced for similar tactics.

SLAPP SUITS

Strategic Lawsuit Against Public Participation (SLAPP) abuses the litigation process to attack a defendant and take them away from the activity they would otherwise be engaged in by tying them up in a civil legal battle. If you are going against a company, institution, or individual whose bad behavior you are attempting to bring into the light, you may get targeted with a SLAPP suit.⁴

³ For an example, look at the Holy Land Foundation Five Case.

⁴ For more information, go to www.protecttheprotest.org.

BASED ON THE COSTS AND MY ABILITY, WHAT AM I GOING TO DO?

Example: I will find a lawyer through legal services or do independent research to figure out how to best keep myself safe. I will also look into developing new professional skills that can make me more resilient if I lose my job. If I reach a point where I believe my taking more advanced action will win this campaign, I will reevaluate this risk with a clearer idea of what can be gained.

A NOTE ON "PROTECTING ASSETS":

For many of us, protecting something means shielding it. We protect money by putting it in a safe. We protect our identities by wearing masks. While there are times and places for this, we would like to challenge us all to find new and creative ways of protecting our assets. Relying on stronger relationships and the bonds formed through vulnerability can keep you safer than a wall. For example, telling co-workers at the nursing home that you are limited in your action based on fear of losing your job may inspire them to take action alongside you and stand with you against a future prosecution. It could inspire them to take on the work of changing the laws. Being vulnerable with your comrades about your fears could connect you to an elder in need who might hire you off the books, or maybe connect you with a job in an unrelated field you'll come to love. Let your comrades and allies hold your risk with you and see what amazing new worlds you create together.

PLANNING YOUR ACTION AND LEGAL NEEDS

Needs for each action are different. Your **creativity is your greatest weapon.** As you are planning your action, you will hopefully use what has come before to help build capacity to do new things. As you are planning your action, **think through what you can do beforehand** to help you be at your strongest when it matters most. For example, do you have the capacity to put together a bail fund before arrests start?

HOW MUCH TROUBLE AM I WILLING TO GO THROUGH TO TRY TO PREVENT POTENTIAL CONSEQUENCES?

Not everyone has the same priorities or views threats in the same way. Your risk analysis is proportional to the harm caused by an attack. For example, if you are planning a trip to Palestine to stand against Israeli settlements, you are going to be more impacted by a social media video of you at a Boycott, Divestment, and Sanctions (BDS) action, so you might go to greater lengths to keep your identity a secret and your own social media secured. Your cousin who mostly just shares cat videos doesn't have the same level of risk because little harm is going to come from their cat videos leaking. Answer the following questions:

WHAT WOULD IT TAKE TO PROTECT YOUR ASSETS?

Examples: Only take actions that I'm confident won't result in charges that will limit my work. Talk to a lawyer about this. Work to challenge the laws that restrict activism and how those laws are enforced to give my community less room to work to make change.

WHAT ARE THE CONSTRAINTS ON YOUR ABILITY TO DO THE ABOVE?

Example: I don't have the money for a lawyer, and I can't work on this campaign and work to change the laws at the same time.

At Standing Rock, many supporting organizations and individuals were targets of a SLAPP suit brought against them by Dakota Access Pipeline. The aim was to tie them up in a legal civil battle in order to suppress political dissent.



List your assets below.

Examples: Strong family relationships, a house, a job at a nursing home.

FROM WHOM OR WHAT DO I WANT TO PROTECT THIS ASSET?

Pick an asset from your list above. What are you trying to protect it from? Who is potentially coming after your asset?

Example: Job at a nursing home, adversaries (Nazis, the State).

HOW BAD ARE THE CONSEQUENCES IF I FAIL?

Different adversaries have different capabilities. What are some of the consequences if your adversaries are successful?

Example: Consequences: Nazis doxing⁹ me could get me fired from the religious conservative nursing home. The State convicting me of a felony could keep me from doing any work with vulnerable individuals for a long period. My boss could use my political activity as grounds to fire me.

⁹ Doxing is the Internet-based practice of researching and broadcasting private or identifying information (especially personally identifying information) about an individual or organization.

DIRECT ACTION: PLAN TO SUCCEED

Don't Be Scared, Be Prepared!

Okay, really, it's okay to be scared. We are up against the most technologically sophisticated apparatus for violence that the world has ever seen. But we are also powerful and often in ways that are invisible to the machines of the State and Capitalism. In the previous section, we studied the State and some tools it may use to come after you and try to halt your work. Don't let the State dictate the terrain of your struggle, but also don't fall for their traps. You can't fight the biggest bully on the block and expect to get away unscathed, but just because you are paying a price doesn't mean you aren't gaining ground.

In this section, we will cover:

- **Clarifying Goals and Strategies:** The more you can clarify your goals, the more successful you will be.
- **Threat Modeling:** Understanding likely outcomes and threats, so you can best protect what is important.
- **Planning for Your Action's Legal Needs:** What logistics need to be in place for the best results?
- **Planning for Post-action Legal Needs:** How might certain legal strategies shape your action planning?

CLARIFYING GOALS AND STRATEGIES

Often, we assume everyone who shows up in struggle has similar goals to us because we don't explicitly discuss our interests. This tendency leads to disappointment when our expectations are dashed—but, with clear communication, we can all get on the same page. Let's start with some definitions.

Visions are big, lofty things that look out into the future. A vision is a destination and is not measurable.

A **goal** is specific, measurable, achievable, realistic, and time bound. To achieve a goal, you need **strategies**. A strategy is a plan of action that brings together many different tactical decisions. A strategy is an overall plan or approach that defines what is important to do in order to reach your goal. A key element of mapping strategy is about defining your **goals**. Strategy determines the selection and operation of tactics. Strategy assists in tracking the progress towards your goals and evaluating the effectiveness of the tactics you use.

To carry out your strategy, you need **tactics**. Tactics are the specific actions that help you fulfill your strategy so you can achieve your goals. This could be any event or action: from a street theater performance to a truth and reconciliation commission. A tactic can be used alone or in concert with other tactics to achieve a specific outcome. Tactics may need to change over time.⁵

A CAUTIONARY NOTE ON SOCIAL MEDIA

The Electronic Frontier Foundation (EFF) has a great deal of information about the use of digital communication. From free speech, privacy, transparency, and security to creativity and innovation, they have a wealth of information on their website.

Surveillance Self-Defense is a digital security guide that EFF publishes to help you assess your personal risk from online spying. It can help protect you from surveillance by those who might want to find out your secrets. EFF offers guides to the best privacy-enhancing tools and explains how to incorporate surveillance-protection into your daily practices.⁵

Other tools that EFF has available include:

Privacy Badger is a browser add-on that stops advertisers and other third-party trackers from secretly tracking where you go and what pages you look at on the web. If an advertiser seems to be tracking you across multiple websites without your permission, Privacy Badger automatically blocks that advertiser from loading any more content in your browser. To the advertiser, it's like you suddenly disappeared.

⁵ Electronic Frontier Foundation, <https://ssd.eff.org>.

THREAT MODELING

In the thick of our struggles, often while in high conflict with our opponents, it is easy to lose track of **who or what is threatening our work** and how they will most likely undermine us. Time and again, groups become **hyper-paranoid** in a way that undermines their work or reject good ideas and new information that could strengthen the struggle, while also making themselves more **vulnerable** to the actual threats. Good threat modeling means we can make more confident decisions about our safety with less paranoia, rumor, and speculation. It's great to do this with your affinity group, but also consider doing one for yourself. Your needs are uniquely your own, and everyone's threats will be different.

(The following is largely adapted from the Electronic Frontier Foundation.)⁸

THINK IT THROUGH

When building a threat model, answer these five questions:

1. What do I want to protect?
2. From whom do I want to protect it?
3. How bad are the consequences if I fail?
4. How likely is it that I will need to protect it?
5. How much trouble am I willing to go through to try to prevent potential consequences?

Use the following pages to explore and complete a threat model.

WHAT DO I WANT TO PROTECT?

An **asset is something you value** and want to protect. When we are talking about repression, your freedom and safety, your comrades, the movement, and the plans for your next action are all likely assets. Relationships are likely assets too. For example, if a landowner is letting you host a camp on "their" land, the State could pressure that landowner to evict you to close the camp. Therefore, your relationship with that landowner is paramount to resisting State repression!

⁸ Electronic Frontier Foundation, <https://ssd.eff.org/en/module/assessing-your-risks>.

You are still just at the beginning. Use this big picture analysis along with other tools to develop a more in-depth strategic plan. There are lots of groups that offer free tools on developing strategic plans. A short list of other resources, some of which are used throughout this book, is in the appendix.

We include these tools here because we believe to successfully push back against State repression and the legal system, we must build resiliency to repression into our organizing. This is not meant to discourage one tactic or another, but rather to encourage articulation of why chosen tactics are important (your ego is not a good enough reason). Strategies that maximize resiliency to repression may include strong personal relationships, alternative support institutions, or powerful broad-based organizations.

POLITICAL STRENGTH AND REPRESSION

There is a **direct relationship between** a group's or individual's **political strength and their ability to push back against repression** to both make important political gains and minimize harm.

On August 14, 1970, police put out a warrant for the arrest of **Angela Davis**, alleging her involvement in the Marin County Courthouse takeover earlier that year. Davis was able to avoid capture while on the FBI's most wanted list, hiding out with friends and supporters until her arrest on October 13th. There was a huge uproar in support of Davis. At her trial, she was acquitted on all charges and hugged by the jurors as they left the courtroom.⁶

On September 24, 2010, a series of coordinated raids were conducted by the FBI targeting long-time activists as part of a "material support of a foreign terrorist organization" investigation. Twenty-three people from around the country were commanded to appear before a Chicago grand jury—and threatened with jail if they refused. But, heroically, the **AntiWar23** all refused to testify. Instead, they visibilized the struggle and drew on support from the anti-war, international solidarity, and other political networks to demand the subpoenas be quashed. Grand juries try to isolate individuals, but the 23 surrounded themselves with supporters. To this day, 9 years later, none of the 23 have been indicted or served a day in custody for contempt.⁷

⁶ David, Angela Y. *Angela Davis: An Autobiography*. New York: Random House, 1974.

⁷ Freedom Road Socialist Organization. "Look Back with Anger: The 2010 FBI Raids on Anti-war and International Solidarity Activists." *FightBack!News*, 24 Sept. 2018, <http://www.fightbacknews.org/2018/9/24/look-back-anger-2010-fbi-raids-anti-war-and-international-solidarity-activists>.

If you are using social media, please remember that nothing is private. It doesn't belong to you and it can be accessed by anyone. The use of location tagging is freely usable. Your photos and video are also public. Be very cautious and intentional in the use of social and digital media.

A recent example: Video Update on the Land Defender hearings with Nick Tilsen and Krystal Two Bulls released on September 5, 2020 regarding the action at Mount Rushmore on July 3, 2020.

"We have heard out of the States Attorney General's Office that there have definitely been threats to release warrants for additional arrests, based on collecting video from folks who weren't arrested that day, but they are reviewing the posted video to see who else they can arrest. They are very threatened by the movement we are building and they are attacking all parts of it."



THINK IT THROUGH

This was first called “Pillars” and used to build strategies to end the Iraq/Afghanistan wars, leading to significant counter-recruitment efforts. This exercise has been adapted by Beautiful Rising: **Pillars of Power**.

This exercise works best in planning for a group. It can scale up for a larger group campaign or down for yourself.

1. On the following page, write inside the triangle the name of the system, regime, or issue you are working on, for example, stopping child detention. Be as honest as you can, based on what is held in common in your group.
2. Identify the “pillars” that are the institutions supporting the target you are trying to change, for example, the border police, ICE, etc.
3. Take a moment to identify which pillars are the most critical to holding up your target. Compare that list to which pillars are more vulnerable to your impact. These are the places where you have the highest chance of success.

Diagram 1
Pillars of Power

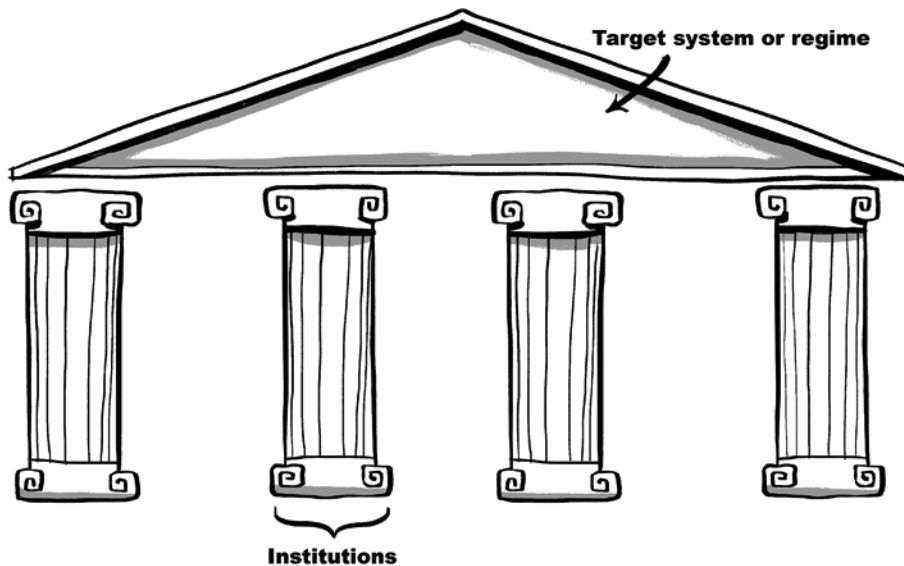
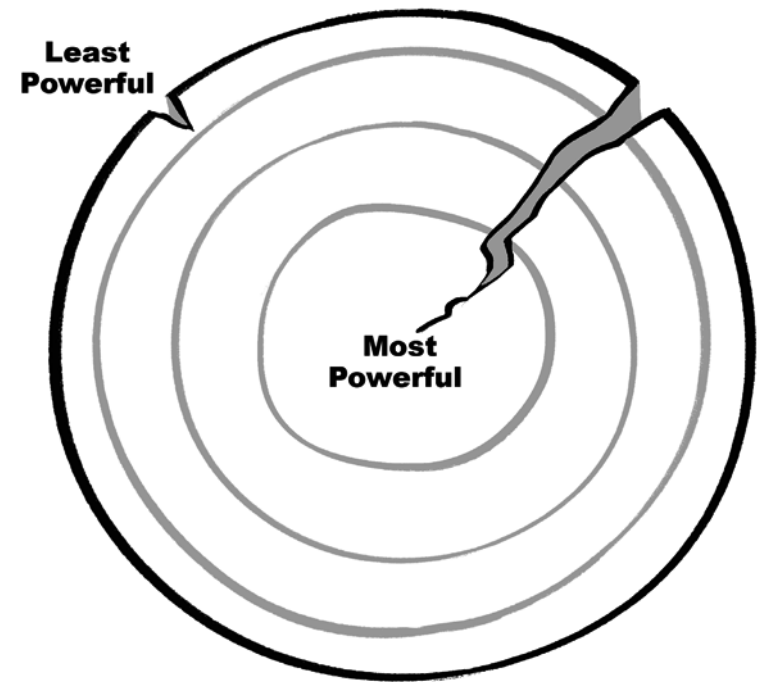


Diagram 2
Least Powerful/Most Powerful



4. Continue to **break down the pillars** to find where you can have the most impact. You could put the institution in a new triangle and do the exercise again, or use the circle tool to develop a cross section of an individual pillar. In the cross-section label, the institution with the individuals or groups that compose it. Be specific with the **center being the most impacted or powerful** (the head of Homeland Security might be in the center of the border patrol pillar, with other leadership in the next circle, then regular border patrol agents, then local law enforcement, border families, etc.). **As you move out from the center, the power that the groups or individuals hold changes, and their connection or loyalty to the institution often diminishes.** This will help you visually assess where you could have the most impact on a pillar and which constituencies you may be able to reach as you try to break down support for the system.